Before the

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the matter of	)	
	)	
Multi-Association Group (MAG) Plan for	)	CC Docket No. 00-256
Regulation of Interstate Services of Non-Price	)	
Cap Incumbent Local Exchange Carriers and	)	
Interexchange Carriers	)	

Comments of TCA, Inc.

I. Introduction and Summary

TCA, Inc. – Telcom Consulting Associates (TCA) submits these comments in response to the Commission's Further Notice of Proposed Rulemaking (FNPRM) in the above-captioned proceeding[1].

TCA is a regulatory, management and financial consulting firm that provides services to rural local exchange carriers (RLEC) throughout the United States. A large majority of TCA's clients are non-price cap, or rate-of-return, regulated and thus would be directly impacted by the adoption of an alternative regulatory structure being contemplated by the Commission in this proceeding.

In summary, TCA believes the Commission should approach major regulatory reform for non-price cap RLECs carefully. The original MAG Plan contained two regulatory regimes, with

[1] Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC Docket 00-256, Second Order and Further Notice of Proposed Rulemaking (FNPRM).

the choice between regimes left completely up to the RLEC[2]. One regulatory regime, "Path A", consisted essentially of alternative, incentive-type, regulation. The other regime, "Path B", left electing carriers under rate-of-return (RoR) regulation, essentially unchanged. This complete optionality was a key component of the MAG Plan's move to alternative regulation, and recognized the inherent differences between non-price cap regulated RLECs. Even though it rejected the MAG Plan's alternative regulation proposal[3], the Commission now wishes to consider some type of alternative regulation for RoR-regulated RLECs.

TCA believes the Commission is correct in examining possible forms of alternative regulation for RoR-regulated RLECs at this time. However, as correctly reflected in the MAG Plan, any new form of regulation should only be applied to RLECs on a voluntary basis. Furthermore, if the Commission decides to adopt an alternative form of regulation currently not available to RLECs, it should do so keeping in mind the universal service goals contained in the Federal Act.

II. Incentive Regulation should be Optional for Rate-of-Return Regulated Carriers

As the Commission noted, RoR regulation has worked well *"in extending service to rural America…"*[4] The eventual emergence of competition in RLEC areas may serve to decrease RoR regulation's efficacy in 1) ensuring just and reasonable interstate rates and 2) ensuring the Act's universal service goals are met. However, the emergence of competition in RLEC areas, if competition indeed emerges at all, will occur in different forms and at different times in each RLEC area. Therefore, a rational, reasonable path to take in this proceeding demands complete

[2] Petition for Rulemaking of the LEC Multi-Association Group, RM No. 10011, filed October 20, 2001 ("MAG Plan") at page 3.
[3] FNPRM at ¶ 217

optionality. Absent a voluntary nature of any alternative to RoR regulation, the Commission would be negating the benefits of RLECs serving areas historically forsaken by larger carriers. In other words, the Commission's deliberations regarding changes to RoR regulation must take into account the great diversity of non-price cap LECs.

The Commission correctly noted that "it would be extremely difficult to establish a mandatory alternative regulatory plan for all rate-of-return carriers."[5] TCA agrees with this assessment, and instead the Commission should strive to adopt policies and procedures regarding when an individual RLEC study may, under its own volition, convert to an alternative form of regulation. TCA believes that the flexibility to convert to an alternative form of regulation should not be solely tied to the level of competition, but should instead be available to any RLEC who can prove a need for pricing flexibility or other features of an alternative regulatory plan. In the alternative, the Commission may wish to correlate adoption of alternative regulation to the level of competition the RLEC is facing. In this case, the existence of a duly authorized, competitive, eligible telecommunications carrier (ETC) in an RLEC's area should allow the affected RLEC to adopt an alternative form of regulation..

III. Pricing Flexibility

The Commission correctly recognizes that "*as competition develops in the service areas of rate-of-return carriers, it is important that they have pricing flexibility, just as it was*

[4] FNPRM at ¶224
[5] FNPRM at ¶227

important for price cap carriers."[6] TCA agrees that pricing flexibility is important for RoR carriers - perhaps the most important issue in this proceeding. Pricing flexibility for interstate access services would not only allow RoR carriers to better prepare for current and future competition, it would also provide RoR carriers with the means to meet ever changing, and increasingly challenging, customer needs.

Pricing flexibility does not necessarily need to be tied to the existence of an incentive regulatory plan; instead, pricing flexibility, in the form of geographic rate deaveraging, volume/term discounts, and contract pricing should be made immediately available to RoR LECs for at least some interstate services. This flexibility should not be limited to those RoR carriers facing a predetermined level of competition. To this end, the Commission could consider immediate pricing flexibility for some interstate services that would not provide the RoR carrier with the means to preclude competitive entry.

The types of competition likely to be faced by small, rural, RoR carriers is not likely to provide these rural carriers with an opportunity to erect barriers to entry related to interstate services. A large majority of small RoR carriers' interstate revenue is generated by switched access services. Should an RoR carrier wish to erect a barrier to entry by a wireless carrier, for example, interstate switched access service would be the least likely method. Indeed, even if a RoR carrier were to flexibly price interstate switched access service below current levels, this would not irreparably harm a wireless carrier's business plans[7], due to the fact that the wireless carrier's cost structure and regulatory status is extremely different from that of the typical small

[6] FNPRM at ¶247
[7] Indeed, lowering access charges could increase the level of interexchange service competition in the RLEC area.

RoR carrier. However, the option to flexibly price interstate services could allow the RoR carrier to revise service offerings, thereby providing the customer with a better, comparable, service with which to match the competitive wireless carrier.

The Commission notes that all RoR carriers may not be facing some degree of competition in their service areas[8]. While this statement may be true in the context of how competition is defined for price cap carriers, many small RoR carriers are facing competition from wireless carriers – both those designated as competitive ETCs and those not seeking ETC status. While many of these wireless carriers may not be taking "lines" from the incumbent RoR carrier, and may not be collocated in RoR carrier central offices, these wireless carriers nonetheless are using expanded local calling scopes to erode RoR carrier revenues through bypass of the traditional toll/access network and reimbursement system. Immediate pricing flexibility of interstate services could help RoR carriers compete, on a level playing field, with the wireless carriers.

The Commission requested comment on the proper geographic over which to measure competition in RoR carrier areas[9]. The Commission concluded that instead of utilizing the Metropolitan Statistical Area (MSA), as is used for price cap LECs, the relatively smaller size of RoR carriers suggests the use of the study area[10]. TCA suggests that, considering the type of competition likely to be seen by small rural RoR carriers, the Commission adopt a smaller geographic area over which to measure competition. For instance, in many cases competition in RoR carrier areas is extremely localized, and usually occurs in exchanges near metropolitan

[8] FNPRM ¶255
[9] FNPRM ¶258

areas or within wireless carrier signal coverage areas. If the Commission feels it needs to measure competition in RoR areas, at least one measure should examine competition at the exchange level, or at the very least, the area should consist of geographically contiguous portions of a RoR carriers' study area.

IV. Conclusion

In summary, TCA recommends the Commission consider changes to the RoR regulatory regime, but apply it to currently RoR-regulated carriers on an optional basis. Furthermore, TCA recommends that pricing flexibility be made immediately available for some, if not all, interstate services offered by RoR-regulated carriers.

Respectfully Submitted,

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[Filed Electronically]

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[10] FNPRM ¶258